

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Immigrant Family Preservation Act.

6 Section 5. Purpose. The purpose of this Act is to protect
7 the foreign national minors or minors holding dual nationality
8 throughout the United States, in particular the State of
9 Illinois. The General Assembly recognizes that foreign
10 national minors and minors holding dual nationality are
11 essential to the maintenance of the culture, traditions, and
12 values of their country of nationality. Therefore, this Act
13 provides a method of early identification of foreign national
14 minors and minors holding dual nationality and their families
15 in order to provide services that ensure all the protections
16 afforded by the Vienna Convention and all other applicable
17 treaties and laws.

18 The General Assembly recognizes that the governments of
19 foreign countries have a duty to care for the interests of
20 their citizens and nationals abroad, particularly those of
21 minors, as expressed in Article 5, Secs. (a) and (h), of the
22 Vienna Convention. The General Assembly also recognizes that it
23 is imperative that foreign consulates be notified, without

1 delay, of guardianship as expressed by the Vienna Convention,
2 Article 37(b). The General Assembly further recognizes that
3 governments of foreign countries have a right to information
4 and access in all cases involving minors who are foreign
5 national minors and minors holding dual nationality.

6 The further purpose of this Act is to ensure compliance
7 with the Vienna Convention. The Vienna Convention provides for
8 consular notification and access in cases in which foreign
9 nationals are involved in legal proceedings. The Convention
10 places a special responsibility on the receiving state's
11 authorities, in this case, the Director of the Department, to
12 treat cases of foreign national minors and minors holding dual
13 nationality with particular care. The General Assembly
14 recognizes that the notification of consular authorities is
15 essential in these cases, not only because a legally binding
16 treaty dictates it, but also because foreign consulates provide
17 essential services that can mutually assist both the Department
18 and the consulates, as well as the individuals personally
19 affected.

20 Section 10. Definitions. In this Act:

21 "Agency" means the agency in a foreign country charged with
22 ensuring the welfare of minors who are nationals of that
23 country or who hold dual nationality in that country and the
24 United States.

25 "Custodian" means the nonparental caretaker of a foreign

1 national minor or minor holding dual nationality who has been
2 entrusted by the parent of the minor with the day-to-day care
3 of the minor.

4 "Department" means the Department of Children and Family
5 Services.

6 "Foreign national minor" means an unmarried person who is
7 under the age of eighteen years, was born in a country other
8 than the United States, and has not acquired United States
9 citizenship as the biological child of a United States citizen.

10 "Minor holding dual nationality" means an unmarried person
11 who is under the age of eighteen years, bears United States
12 citizenship, and is eligible for nationality in another country
13 as the biological child of a parent who is national of that
14 country.

15 "Vienna Convention" means the Vienna Convention on
16 Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820.

17 Section 15. Inquiry. The Department shall inquire, at the
18 time a decision to take protective custody of a minor is made,
19 whether the minor is a foreign national minor or minor holding
20 dual nationality. The Department shall provide to any such
21 minor, and any parent or custodian of such minor, information,
22 in English and the minor's native language, explaining the
23 protective custody process and the rights of the minor and his
24 or her parents or custodian, including those rights afforded
25 under the Vienna Convention, and the address and telephone

1 number of the nearest consulate serving the minor. If the
2 Department learns at a later time that the minor is a foreign
3 national minor or minor holding dual nationality, then the
4 information shall be forwarded to the appropriate parties as
5 determined under this Act.

6 Section 20. Notification.

7 (a) The Department shall promulgate rules under which it
8 would notify the appropriate consulate in writing in a timely
9 manner after:

10 (1) the initial date the Department takes custody of a
11 foreign national minor or a minor holding dual nationality
12 or the date the Department learns that a minor in its
13 custody is a foreign national minor or a minor holding dual
14 nationality, whichever occurs first;

15 (2) the parent of a foreign national minor or a minor
16 holding dual nationality has requested that the consulate
17 be notified; or

18 (3) the Department determines that a noncustodial
19 parent of a foreign national minor or a minor holding dual
20 nationality in its custody resides in the country
21 represented by the consulate.

22 (b) The Department shall provide the consulate with the
23 name and date of birth of the foreign national minor or the
24 minor holding dual nationality, the name of his or her parent
25 or custodian, and the name and telephone number of the

1 departmental caseworker directly responsible for the case.

2 (c) If the consulate needs additional specific information
3 regarding the case of the foreign national minor or the minor
4 holding dual nationality, the consulate may contact the
5 Department's Division of Guardian and Advocacy or the
6 Division's designee, and the Department may release any
7 information not required to be kept confidential under federal
8 or Illinois law.

9 Section 25. Confidentiality; further information.

10 (a) Disclosure of information under this Act is subject to
11 the same requirements of confidentiality as the disclosure of
12 information under the Juvenile Court Act of 1987 and the Abused
13 and Neglected Child Reporting Act.

14 (b) In order to respond to a consulate's need for specific
15 information regarding the cases of foreign national minors and
16 minors holding dual nationality, the Department shall
17 designate Department personnel who are responsible for
18 responding to requests from foreign consulates for such
19 information.

20 Section 30. Interview of minor by consular representative.
21 Any foreign national minor or minor holding dual nationality in
22 the custody of the Department may be interviewed by a
23 representative of the consulate of the country of the child's
24 nationality. In the case of a minor holding dual nationality,

1 the Department's Guardianship Administrator or his or her
2 designee must consent to the interview. In order to arrange for
3 such an interview, the consulate shall contact the Department's
4 Division of Guardian and Advocacy or the Division's designee.

5 Section 35. Special Immigrant Juvenile Status. In cases in
6 which a foreign national minor has been placed as a ward of the
7 State of Illinois and has become eligible for Special Immigrant
8 Juvenile Status (SIJS) pursuant to 8 U.S.C. 101(a)(27)(J)(ii),
9 the Department may seek the assistance of the consulate of the
10 country of the child's nationality in obtaining the necessary
11 documentation from that country for completion of the SIJS
12 application.

13 Section 40. Proof of nationality. The Department's
14 Division of Guardian and Advocacy may obtain a birth
15 certificate from the appropriate country for a foreign national
16 minor or a minor holding dual nationality in the custody of the
17 Department. The Department may request the assistance of the
18 consulate in obtaining the necessary documentation to complete
19 the application for a birth certificate under this Section.

20 Section 45. DCFS assistance to foreign child welfare
21 agencies.

22 (a) Upon notification to a consulate pursuant to Section 20
23 of this Act, the Department may request that the consulate

1 obtain through the agency the appropriate home studies of
2 potential families in such country who may be involved in the
3 case and forward the information to the departmental caseworker
4 directly responsible for the case.

5 (b) When a foreign national minor is placed in his or her
6 country or a minor holding dual nationality is placed in the
7 country other than the United States in which he or she holds
8 nationality, the Department shall take all steps necessary to
9 obtain the cooperation of the consulate and the agency to
10 ensure the minor's welfare and provide whatever services are
11 needed. The Department shall request copies of the monitoring
12 reports prepared by the agency concerning the welfare of the
13 minor and shall ensure that such information is delivered to
14 the Department caseworker directly responsible for the case of
15 the minor.

16 Section 50. Witnesses. The Department may request the
17 cooperation of the appropriate consulate to locate individuals
18 who reside in a foreign country and are required to appear in
19 an Illinois court in connection with cases involving a foreign
20 national minor or a minor holding dual nationality, in order to
21 properly notify such individuals of court appearances.

22 Section 55. Ongoing communication. Department staff shall
23 meet as needed with consular officers in order to discuss,
24 clarify, and coordinate activities in areas of mutual interest

1 and concern. The Department may participate with the consulates
2 in joint prevention efforts regarding the protection and
3 well-being of foreign national minors and minors holding dual
4 nationality and their families. In addition, the Department's
5 Division of Communications shall make every effort to exchange
6 with the consulates ideas and concerns of a high profile nature
7 that may result in media attention, in a timely manner. The
8 consulates may contact the Department's Division of Guardian
9 and Advocacy, Advocacy Office for Children and Families, or
10 Office of Inspector General at any time, however,
11 notwithstanding any other provision of this Act.

12 Section 60. Immunity. Except as otherwise expressly
13 provided in this Act, nothing in this Act shall be construed as
14 a waiver of immunities to which a consulate and its consular
15 agents are entitled to under international law, the Foreign
16 Sovereign Immunities Act of 1976, 28 U.S.C. 1602 et seq., and
17 international treaties in force between the United States and
18 foreign countries. Except as otherwise expressly provided in
19 this Act, this Act shall not imply or confer a submission by
20 any foreign country or its consular agents to the jurisdiction
21 of any United States or Illinois courts.

22 Section 65. No authority to make or promulgate rules.
23 Notwithstanding any other rulemaking authority that may exist,
24 neither the Governor nor any agency or agency head under the

1 jurisdiction of the Governor has any authority to make or
2 promulgate rules to implement or enforce the provisions of this
3 Act. If, however, the Governor believes that rules are
4 necessary to implement or enforce the provisions of this Act,
5 the Governor may suggest rules to the General Assembly by
6 filing them with the Clerk of the House and Secretary of the
7 Senate and by requesting that the General Assembly authorize
8 such rulemaking by law, enact those suggested rules into law,
9 or take any other appropriate action in the General Assembly's
10 discretion. Nothing contained in this Act shall be interpreted
11 to grant rulemaking authority under any other Illinois statute
12 where such authority is not otherwise explicitly given. For the
13 purposes of this Act, "rules" is given the meaning contained in
14 Section 1-70 of the Illinois Administrative Procedure Act, and
15 "agency" and "agency head" are given the meanings contained in
16 Sections 1-20 and 1-25 of the Illinois Administrative Procedure
17 Act to the extent that such definitions apply to agencies or
18 agency heads under the jurisdiction of the Governor.